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In re Application of :
RUETZ et al. :
Application No.: 10/019,171 :
PCT No.: PCT/DE00/02081 : DECISION
Int. Filing Date: 23 June 2000 :
Priority Date: 22 June 1999 :
Attorney Docket No.: ZIP-2382 :
For: APPLIANCE FOR DISPENSING :
SCENTS AND AN AROMA STORE :
:

This is a decision on applicants' "Request for Refund" filed in the Patent and Trademark Office on 03 February 2003.

BACKGROUND

On 21 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States of America. Filed with the transmittal letter were, inter alia: the requisite \$445 basic national fee; a copy of the international application; and a declaration.

On 07 February 2002, applicants filed a preliminary amendment and an English translation of the international application.

On 05 March 2002, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath/declaration was not executed in accordance with 37 CFR 1.66 or 1.68 (the Declaration did not include all inventors listed on the International Application) and that an English translation of the international application was needed. The notification set a two-month time limit in which to respond.

On 12 April 2002, applicants filed "Reply to Notification of Missing Requirements" indicating that "the an English translation of the international application was filed on 07 February 2002" and that a declaration in compliance with 37 CFR 1.68 was filed on 21 December 2001.

On 30 August 2002, the United States Designated/Elected Office mailed "Notification of Defective Response" indicating that the English translation of the international application was defective because it included text that had not been

translated. Additionally, the Notification indicated that the declaration filed on 21 December 2001 had not been executed by Gerhard Probst and Christian Breu. The signature page for Gerhard Probst and Christian Breu was not included with the 21 December 2001 submission.

On 01 October 2002, applicants filed "Reply to Notification of Defective Response" which included an English translation of the international application in compliance with 37 CFR 1.495 and a declaration in compliance with 37 CFR 1.497.

On 09 January 2003, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) which set forth a 35 U.S.C. 371 completion date of 01 October 2002.

On 03 February 2003, applicants filed the present request for refund.

DISCUSSION

Applicants are requesting a refund of the \$65 surcharge for filing a declaration later than 30 months from the priority date. Applicants state in the present petition, "[s]ince the declaration that filed on 21 December 2001 listed all five inventors and was signed by all five inventors, it is believed that no surcharge for providing the declaration later than 30 months should be required." A review of the application file reveals that the declaration submitted on 21 December 2001 was not in compliance with 37 CFR 1.497. Specifically, the declaration did not include page 4 of 4, which listed the names of the fourth and fifth inventors. Applicants filed a declaration in compliance with 37 CFR 1.497 on 30 August 2002, a date later than 30 months from the priority date, and thus, the charging of the \$65 fee under 37 CFR 1.492(e) was proper. The request for refund is dismissed without prejudice.

CONCLUSION

The request for refund is DISMISSED without prejudice.

Applicants are given **TWO (2) MONTHS** from the mail date of this Decision to submit a proper translation of the international application. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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